IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

OT.Appeal.No. 8 of 2007

C3.12287/07/CT , DATED 25.5.2007, of COMMR. OF COMMERCIAL TAXES, TRIVANDRUM

APPELLANT/APPLICANT

K.P.GOPINATH,
PROPRIETOR,
JEEVANS HOUSE,P.B.NO. 26,
KOTHAMANGALAM-686691.

BY ADV. SRI.S.ANIL KUMAR (TRIVANDRUM)

RESPONDENTS: STATE

STATE OF KERALA
REPRESENTED BY THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS OTHER TAX APPEAL HAVING COME UP FOR ADMISSION ON 31/10/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.T.A. NO. 8 OF 2007

Dated this the 31st October, 2007

JUDGMENT

H.L.DATTU, C.J.

Appellant before us is a registered dealer under the provisions of the Kerala Value Added Tax Act, 2003 ('KVAT Act' for short). It is the manufacturer of a commodity known as “Ragitone”. In order to get an appropriate clarification from the Commissioner of Commercial Taxes, Kerala, the appellant had filed an application for clarification as envisaged under Section 94 of the Act.

2. The Commissioner of Commercial Taxes, after hearing the appellant's learned counsel and after going through the literature which would explain the commodity “Ragitone”, has come to the conclusion that the rate of tax applicable to the sale of “Ragitone” is under entry 103 of SRO 82/06 and not as contended by the appellant that it would fall under entry 86 of the 3rd schedule to the KVAT Act, 2003. Aggrieved by the reasoning and the conclusion reached by the Commissioner of Commercial Taxes, the dealer is before us in this appeal.

3. The appellant has raised the following questions of law for our consideration and decision. They are as under:

> “(A) Is the finding of the Commissioner of Commercial Taxes that the product 'Ragivitta' manufactured by the appellant by mixing the powders of ragi, cardamom and muthanga is taxable @ 12.5% under entry 103 of SRO.92/06 justified in law?
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> (B) Is the Commissioner of Commercial Taxes justified in law in his finding that the content, structure and use, of “Ragivitta” which was considered by this Hon'ble Court in O.T.Appeal No.10 of 2006 and “Ragitone” manufactured by the appellant are almost in the same line and so the tax formulation entered into by High Court in the case of “Ragivitta” is squarely applicable in the case of “Ragitone” also?”

4. Learned counsel appearing for the appellant would submit that the item manufactured by the appellant is nothing but a mixture of cereals, pulses and spices and, therefore, necessarily it would fall under entry 86 of the third schedule to the KVAT Act and the rate of tax is at 4%.

5. To substantiate the contention so canvassed, the learned counsel appearing for the appellant takes us through the process of manufacture said to have been employed by the appellant for manufacturing the commodity known as "Ragitone". According to the appellant, the "Ragitone" is manufactured as under:

> "(i) Ragi is pre-cleaned, washed thoroughly with water and steeped in excess water for 2 to 4 hours, replacing the water 2 to 3 times. The steeped water is drained off. Ragi is then dried and roasted at 70^0. It is then cooled, powdered and sieved to get the flour.
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> (ii) Cardamom is pre-cleaned and dried and then powdered and sieved to get the flour.
>
> (iii) Muthanga is also pre-cleaned, washed thoroughly and steeped for one to two hours. Steeped water is then drained off; muthanga is then dried, roasted, powdered and sieved to get the flour.
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> All the above three ingredients are then mixed together. The product is sold under the brand name "Ragitone" which is not registered under the Trade Marks Act, 1999. "

6. Keeping in view the process of manufacture employed by the appellant to manufacture "Ragitone", the learned counsel for the appellant would submit that the "Ragitone" requires to be taxed only under entry 86 of the third schedule to the

KVAT Act and not under entry 103 of SRO.82/06.

7. Sri.Muhammed Rafiq, learned Senior Government Pleader appearing for the respondent, would produce the literature of “Ragitone” before us and then would submit that “Ragitone” is not just a mixture of cereals, pulses and spices and, therefore, the Commissioner of Commercial Taxes is justified in coming to the conclusion that the said product would fall under entry 103 of SRO 82/06.

8. Section 94 of the KVAT Act, 2003 authorises/grants power to the Commissioner to issue clarification. Apart from others, the Commissioner is empowered to give clarification, whether any tax is payable in respect of any sale or purchase, or if tax is payable, the point and the rate thereof etc.

9. Under sub-section (3) of Section 94 of the KVAT Act, the application requires to be filed by the dealer in the form prescribed under the Act. Under sub-section (5) of Section 94 of the Act, the order passed by the Commissioner of Commercial Taxes would be binding not only on the dealer but also on the authorities subordinate to the Commissioner including Deputy Commissioner (Appeals).

10. Appellant, in order to have an appropriate clarification from the Commissioner of Commercial Taxes with regard to the tax payable on its manufactured product, namely, “Ragitone”, had filed an application as envisaged under sub-section (3) of Section 94 of the Act. The clarification that was sought is, whether “Ragitone” is exigible to tax under entry 86 of the third schedule to the KVAT Act.

11. The Commissioner of Commercial Taxes, after going through the literature on the product “Ragitone”, has come to the conclusion that “Ragitone”

is not a mere mixture of cereals, pulses and spices and, therefore, it cannot be brought to tax under entry 86 of the third schedule to the Act, but it requires to be taxed under entry 103 of SRO.82/06. While arriving at the aforesaid conclusion the Commissioner of Commercial Taxes in its order, dated 25.5.2006, has stated as under:

> "The applicant contended that "Ragitone" is only a mixture of three ingredients, viz. Ragi, cardamom and Muthanga and so classifiable under entry 86 of third schedule to KVAT Act, which reads as "mixture of cereals, pulses, spices in raw form roasted or powdered sold under brand name other than those registered under the Trade Marks Act, 1999".
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> In the case of a similar product, "Ragivitta", which is a combination of Ragi, Red raw rice flour, cocoa and cardamom, the Hon'ble High Court in OT Appeal No.10 of 2006 dated 16.1.2007 had upheld the findings of Commissioner of Commercial Taxes with regard to rate of tax, and entered into a conclusive finding that it would fall under the entry 103 of SRO 82/06 and would fetch 12.5% tax rate.
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> Both the products mentioned above are manufactured by "Jeevans". Going by the product profile "Ragivitta" is mentioned as "an ideal natural medicated solid food for Bonnie Babies". Manufactured from the milk extracted from germinated Ragi mixed with liquid extracts of cardamom and muthanga of Ayurvedic herbs and is profiled as a highly vitaminised child food.
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> By virtue of item 23 of clause (VI) of Rules of Interpretation Regitone cannot be classifiable under entry 36 of 3rd schedule. This cannot either be classifiable under entry 86 of schedule III to KVAT Act which deals with mixture of cereals, pulses etc..
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> In the case of "Ragivitta" referred ibid, the Hon'ble High Court held that being not flour only, but a preparation of Ragi, red raw rice flour, cocoa and cardamom the commodity cannot fall under entry 86 of 3rd schedule, but is exigible to tax U/s.6(1)(d) read with the residual entry 103 of SRO 82/06.
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> Going by the product profile it is seen that in content, structure and use, both the commodities are almost in the same line and so the tax formulation entered into by High Court in the case of "Ragivitta", is squarely applicable in the case of "Ragitone" also.

> So the product "Ragitone" is classifiable under entry 103 of SRO 82/06 taxable @ 12.5%."

12. The question that requires to be considered and decided by this Court is whether "Ragitone" that is manufactured by the assessee is a mere mixture of cereals, pulses and spices or a commodity which is manufactured from the milk extracted from germinated Ragi seeds and mixed with liquid extracts of Cardamom and Muthanga and sold under the brand name other than those registered under the provisions of the Trade Marks Act, 1999.

13. The assessee's stand before the Commissioner of Commercial Taxes and also before this Court is that Ragi, Cardamom and Muthanga are cleaned, washed and dried and thereafter, they are powdered and all the three ingredients are mixed and packed and sold and, therefore, it is the mixture of cereals, pulses and spices.

14. Learned counsel appearing for the Revenue has brought to our notice what has been put in the web-site by the very assessee.

15. The materials so produced by the learned counsel Sri.Muhammed Rafiq would indicate the process of manufacture of "Ragitone". The same is as under:

> "Ragi (Eleusine Coracana Gaertn) recommended by the World Health Organisation as the ideal solid food for bonnie babies. Jeevans Ragitone is manufactured from the milk extracted from germinated Ragi seeds and mixed with liquid extracts of Cardamom and Muthanga.
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> Ragitone is not mixed with any artificial Vitamins or Chemicals. Ragi is the richest natural source of Energy, Iron, Calcium and Carbohydrate. Ragi also has the highest digestibility amongst all natural foods. Ragi provides energy, helps bone and teeth formation in babies, enriches blood and accelerates growth.
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> Ragitone contains extracts of Ragi, Cardamom and Muthanga. Muthanga is a gentle natural dewormer (destroys

worms) and Cardamom is a flavouring agent and carminative (removes gas from baby's stomach).

Usage:

Two table spoon full Ragitone in 250 ml. water or milk is stirred well and boiled to paste form. Sweeten with sugar if necessary.

Indication:

Jeevans Ragitone is manufactured from the milk extracted from germinated Ragi and mixed with liquid extracts of Cardamom and Muthanga of Ayurvedic herbs. Ragitone is not mixed with any artificial vitamines. This is a unique and highly vitaminised child food.

Ragitone is the first choice for new-born babies. It is administered in liquid paste form. Ragitone contains Proteins, Carbohydrates, needy fats for digestion and gives resistance power from the attack of child diseases and also provides rich physical and mental growth to the child. Ragitone is a natural source of calcium in good proportion for the growth of the teeth as well as the bone of the child."

16. In order to fall under entry 86 of the third schedule to the Act, it must be a mixture of cereals, pulses and spices in dried form, roasted and powdered and sold under the brand name other than those registered under the provisions of the Trade Marks Act, 1999. Entry 103 of SRO 82/06 speaks of goods which are not covered by any other entry of this list or by any entry of any of the Schedules to the Kerala Value Added Tax Act, 2003. Rate of Tax is 12.5%.

17. In the instant case, as we have already noticed, "Ragitone" is not a mere mixture of cereals, pulses and spices in powdered form. It is, but, manufactured from the milk extracted from the germinated Ragi seeds and mixed with liquid extracts of Cardamom and Muthanga. Therefore, in our opinion, the Commissioner of Commercial Taxes was justified in informing the appellant by its order, dated 25.5.2007, that the rate of tax payable on the sale of "Ragitone" would fall under entry 103 of the third schedule to SRO.82/06 and not as contended by the assessee.

18. In our opinion, in view of the aforesaid discussion, the Commissioner of Commercial Taxes was fully justified in coming to the conclusion that "Ragitone" is classifiable only under entry 103 of SRO 82/06 and taxable at 12.5%.

19. In view of the above, the questions of law framed by the assessee require to be answered against the assessee and in favour of the Revenue. Accordingly, the appeal required to be rejected and it is rejected.

20. In view of the order passed in the appeal, the relief sought for in I.A.No.2666 of 2007 need not be considered by this court. Accordingly, the said application is also rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/DK.